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NEWHOUSE PARTNERSHIP, A NEW YORK GENERAL  
8 PARTNERSHIP

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
11

12 LEON ALPERT, an individual, on behalf of  
13 himself, on behalf of all those similarly  
situated, and on behalf of the general public,

14 Plaintiffs,

15 v.

16 TIME WARNER CABLE, INC., a Delaware  
17 corporation, and DOES 1 TO 100,

18 Defendants.

CV No. 08CV582 BTM

**NOTICE OF MOTION AND MOTION OF  
DEFENDANT TIME WARNER CABLE  
FOR SUMMARY JUDGMENT OR, IN  
THE ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT**

Date May 23, 2008  
Time 11:00 a.m.  
Ctrm: 15  
Judge: Hon. Barry Ted Moskowitz

**[NO ORAL ARGUMENT UNLESS  
REQUESTED BY THE COURT]**

Complaint: March 13, 2007  
FAC: May 16, 2007  
Removal: March 28, 2008

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 23, 2008 at 11:00 a.m., or as soon thereafter as can  
3 be heard, in Courtroom 15 of the above-entitled Court, located at 880 Front Street, San Diego,  
4 California 92101, Defendant Time Warner Entertainment-Advance/Newhouse Partnership,  
5 through its San Diego Division, dba Time Warner Cable (“TWC”) will and hereby does move  
6 this Court for summary judgment or, in the alternative, partial summary judgment in favor of  
7 TWC against Plaintiff Leon Alpert (“Plaintiff”).

8 This motion is made pursuant to Rule 56 of the Federal Rules of Civil Procedure because  
9 Plaintiff’s claims lack merit as a matter of law. Specifically, TWC respectfully requests that the  
10 Court grant summary judgment in its favor and against Plaintiff on the following grounds:

11 **Issue #1:** Plaintiff’s cause of action for violation of Business & Professions Code section  
12 17200 *et seq.*, based on TWC engaging in unlawful conduct in violation of the Consumer Legal  
13 Remedies Act (“CLRA”), lacks merit as a matter of law because Plaintiff cannot prove a violation  
14 of the CLRA.

15 **Issue #2:** Plaintiff’s Cause of Action for Violation of Business & Professions Code  
16 section 17200 *et seq.*, based on TWC engaging in unlawful conduct by breaching its agreement  
17 with Sea Point Townhomes’ Home Owners’ Association (the “HOA”), lacks merit as a matter of  
18 law because TWC did not breach its agreement with the HOA.

19 **Issue #3:** Plaintiff’s Cause of Action for Violation of Business & Professions Code  
20 section 17200 *et seq.*, based on TWC engaging in unfair conduct by overcharging Plaintiff, lacks  
21 merit as a matter of law because TWC did not overcharge Plaintiff.

22 **Issue #4:** Plaintiff’s Cause of Action for Violation of Business & Professions Code  
23 section 17200 *et seq.*, based on TWC engaging in unfair conduct by requiring thirty-day  
24 notification of billing errors while failing to disclose HOA pricing that accounted for HOA  
25 payments, lacks merit as a matter of law because such notification terms are reasonable.

26 **Issue #5:** Plaintiff’s Cause of Action for Violation of Business & Professions Code  
27 section 17200 *et seq.*, based on TWC engaging in unfair conduct by requiring thirty-day  
28 notification of billing errors while failing to disclose HOA pricing that accounted for HOA

1 payments, lacks merit as a matter of law because the notification term had no effect on Plaintiff,  
2 yet has a legitimate business benefit to TWC.

3 **Issue #6:** Plaintiff's Cause of Action for Violation of Business & Professions Code  
4 section 17200 *et seq.*, based on TWC engaging in unfair conduct by requiring thirty-day  
5 notification of billing errors while failing to disclose HOA pricing that accounted for HOA  
6 payments, lacks merit as a matter of law because TWC did not fail to disclose such pricing.

7 **Issue #7:** Plaintiff's Cause of Action for Violation of Business & Professions Code  
8 section 17200 *et seq.*, based on TWC engaging in unfair conduct by breaching its agreement with  
9 the HOA, lacks merit as a matter of law because TWC did not breach its agreement with the  
10 HOA.

11 **Issue #8:** Plaintiff's Cause of Action for Violation of Business & Professions Code  
12 section 17200 *et seq.*, based on TWC engaging in misleading conduct by overcharging Plaintiff,  
13 lacks merit as a matter of law because TWC did not overcharge Plaintiff.

14 **Issue #9:** Plaintiff's Cause of Action for Violation of Business & Professions Code  
15 section 17200 *et seq.*, based on TWC misleading Plaintiff regarding when he was required to  
16 notify TWC of billing errors by hiding notification requirements and failing to disclose HOA  
17 pricing that accounted for HOA payments, lacks merit as a matter of law because the notification  
18 term was included in Plaintiff's contract and on every invoice sent to Plaintiff.

19 **Issue #10:** Plaintiff's Cause of Action for Violation of Business & Professions Code  
20 section 17200 *et seq.*, based on TWC concealing HOA pricing that accounted for HOA payments,  
21 lacks merit as a matter of law because TWC did not fail to disclose such pricing.

22 **Issue #11:** Plaintiff's Cause of Action for Violation of Business & Professions Code  
23 section 17200 *et seq.*, based on TWC misrepresenting its affiliation, connection, or association  
24 with the HOA, lacks merit as a matter of law because TWC made no such misrepresentations.

25 **Issue #12:** Plaintiff's Cause of Action for Violation of Business & Professions Code  
26 section 17200 *et seq.*, based on TWC misrepresenting the reason for the decrease in Plaintiff's bill  
27 for Additional Services after he changed his services to a bundled package, lacks merit as a matter  
28 of law because TWC made no such misrepresentations.

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT [CV NO. 08CV582]